

Cornnuts, Inc. and Bakery, Confectionery & Tobacco Workers International Union of America, Local 85, AFL-CIO, Petitioner. Case 32-RC-3782

September 15, 1994

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on October 14 and 15, 1993, and the Regional Director's report recommending disposition of them. The tally of ballots shows 31 for and 14 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the Regional Director's findings¹ and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Bakery, Confectionery & Tobacco Workers International Union of America, Local 85, AFL-CIO and that it is the exclusive collective-bar-

¹ The Regional Director found no merit to the Employer's objections involving certain statements allegedly made by the Board agent to the observers during the Thursday night polling session. In support of his finding, the Regional Director observed that these conversations occurred *after* the observers had voted. The Employer argues that the Regional Director erred because its evidence (see attached appendix) shows that these discussions must have occurred *before* the observers had voted. Given the innocuous nature of these remarks attributed to the Board agent, we find it unnecessary to resolve this dispute over timing. We therefore overrule the objections based on the substance of the remarks rather than their timing.

In adopting the Regional Director's recommendation to overrule the Employer's objections concerning leadperson Lisa Garrett's pronoun conduct, we rely only on the fact that the Employer is attempting to raise postelection challenges in the form of objections, which is not permitted. See *Poplar Living Center*, 300 NLRB 888 (1990). We therefore find it unnecessary to pass on the Regional Director's alternative analysis based on an assumption that Garrett is a supervisor. However, we correct the Regional Director's typographical error in referring to Garrett as Ken Hellwig, the Employer's plant manager, in the last sentence of his analysis of her conduct.

In adopting the Regional Director's overruling of the Employer's objection, we emphasize that we have viewed the Employer's evidence in the light most favorable to the Employer. See *Frontier Hotel*, 265 NLRB 343 (1982); *Bell Foundry Co. v. NLRB*, 827 F.2d 1340 (9th Cir. 1987). In our view, the Employer's evidence, viewed in this light, does not establish a basis for setting aside the election.

gaining representative of the employees in the following appropriate unit:

All full time and regular part-time production and maintenance employees, leadpersons, warehouse employees, utility department and sanitation employees employed by the Employer at its Fresno, California production facility; excluding managers, production control coordinators, quality control coordinators, office clerical employees, guards and supervisors as defined in the Act.

Appendix

In support of its objections to the Board agent's comments to observers, the Employer relies on paragraphs 10 and 11 of the declaration of Ron Johnson, an observer. Those paragraphs follow.

10. During the Thursday night polling, we had numerous discussions with the NLRB Agent. Among other things, we discussed the history of Cornnuts and how the product was grown, seasoned, packaged and marketed. She indicated that she was familiar with the product and knew that it had been around for a while—almost 50 years. She remembered eating them when she was a youngster. The NLRB Agent raised union organizing in our industry. The Agent brought up the fact that she visited a company in her Region's jurisdiction where the employer manufactured the same sort of film packaging that we use at Cornnuts. The NLRB Agent indicated that she had a case involving an election at the plant where the packaging was produced. There are not many film packaging producers in the area, and I assumed it was a company that had supplied Cornnuts in the past. The NLRB Agent raised union organizing on Friday too. On Friday she told us about elections she held at the agency for 911 emergency service and for medical staff at a prison.

11. During the Thursday night polling, the NLRB Agent discussed growing up in the 1960's. At one point she raised going to a convention recently where two speakers addressed living in communes in the '60's and being in demonstrations where one of the speakers was arrested for carrying a shotgun. She told us that she attended the convention, because it involved matters of a professional nature. Adam brought up the free life and drugs of the '60's. The NLRB Agent told us that she never took drugs, but her mother asked her about it all the time. She told us that parents in the '60's were not as worried about their children as they are now. She said that parents are more concerned about childrens' drug use today. One of the big campaign issues before the election was health coverage and whether the Union could obtain Kaiser coverage for us at a low cost.